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**IN THE
COURT OF APPEALS OF INDIANA**

ROMAN LEE JONES,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 45A03-0604-PC-162
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Kathleen A. Sullivan, Magistrate
Cause No. 45G03-9501-CF-27

September 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-petitioner Roman Lee Jones appeals from the post-conviction court's denial of his motion to correct sentence. In particular, Jones contends that the trial court erroneously imposed consecutive sentences based upon a statute that was not in effect at the time he committed the offenses. Finding no error, we affirm the judgment of the post-conviction court.

FACTS

In its opinion on Jones's direct appeal, our Supreme Court summarized the underlying facts as follows:

The defendant and Kenneth Spiller were drug dealers who had been involved in selling cocaine from Levester Snelling's house. The defendant and Spiller decided to kill Snelling either because Snelling owed Spiller money or because Snelling had informed police about the drug operations. When the defendant and Spiller arrived at the house on January 20, 1995, they found Snelling in the northeast bedroom. Spiller entered the room and shot him. Spiller then walked to the southwest bedroom to join the defendant. This room was occupied by four women smoking crack cocaine: Snelling's niece, Diane Snelling; his daughter, Stacey Snelling; and two friends, Terri Lee Ross and Geraldine Jackson. Two semi-automatic pistols were fired rapidly at the women in the room, killing Ross, Jackson, and Snelling's daughter. Only Snelling and his niece survived. At trial, the State claimed that the defendant personally participated in the shootings and that he was also liable as an accessory.

Jones v. State, 697 N.E.2d 57, 58 (Ind. 1998). On January 27, 1995, the State charged Jones with three counts of murder and two counts of attempted murder. On October 7, 1996, a jury found Jones guilty as charged.

On December 27, 1996, the trial court sentenced Jones to sixty years each on the three murder counts and forty-five years each on the attempted murder counts. The trial court ordered Jones to serve the sentences on the three murder counts and one of the attempted

murder counts consecutively to one another, with the remaining sentences to be served concurrently. Thus, the trial court imposed an aggregate executed sentence of 225 years upon Jones. Jones appealed his convictions and, on July 23, 1998, our Supreme Court affirmed the judgment of the trial court. Jones, 697 N.E.2d at 60.

On February 3, 2003,¹ Jones filed a petition for post-conviction relief, alleging that the trial court had erroneously instructed the jury and that his trial counsel was ineffective for failing to object to the erroneous instructions. Following a hearing, the post-conviction court denied Jones's petition. On January 9, 2004, Jones appealed the judgment of the post-conviction court and on June 28, 2004, this court affirmed the denial of relief. Jones v. State, No. 45A05-0309-PC-469, slip op. at 10 (Ind. Ct. App. June 28, 2004).

On January 12, 2006, Jones filed a motion to correct sentence, alleging that the trial court had improperly imposed consecutive sentences. On February 27, 2006, the post-conviction court denied Jones's motion. Jones now appeals.

DISCUSSION AND DECISION

As we consider Jones's contention that the trial court erroneously ordered him to serve certain sentences consecutively to one another, we observe that Jones's motion derives from Indiana Code section 35-38-1-5, which provides as follows:

[i]f the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A

¹ On December 15, 1998, Jones filed a pro se petition for post-conviction relief, which he withdrew on July 14, 2000. On November 20, 2002, Jones reactivated his petition for post-conviction relief and was represented by counsel in filing the amended petition on February 3, 2003.

motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

When a sentencing-related error occurs, it is in the best interests of all concerned that it be immediately discovered and corrected. Robinson v. State, 805 N.E.2d 783, 786 (Ind. 2004). It is preferred that a defendant raise a sentencing error in an immediate motion to correct sentence, in an optional motion to correct error under Indiana Trial Rule 59, as part of a direct appeal, or as part of a petition for post-conviction relief. Id. But the statutory motion to correct sentence is available as an alternate remedy. Id.

While the statutory motion to correct sentence is available as an alternate remedy, it is appropriate only when the sentence is erroneous on its face. Id. Thus, if a claim of sentencing error requires consideration of matters outside the face of the sentencing judgment, it may only be addressed on direct appeal and, where appropriate, by post-conviction relief proceedings. Id. at 587. Our Supreme Court has emphasized that use of the statutory motion to correct sentence should be narrowly confined to claims apparent from the face of the sentencing judgment and that the “facially erroneous” prerequisite should be strictly applied. Id.

Here, Jones argues that the trial court improperly sentenced him to consecutive terms based upon Indiana Code section 35-50-1-2(d), which was allegedly not in effect at the time he committed the instant offenses. To evaluate this claim, we must determine the date on which Jones committed the offenses, the date on which Indiana Code section 35-50-1-2(d) became effective, and whether, in fact, the trial court relied upon that statute in imposing consecutive sentences on Jones. Those determinations are dependent on matters outside the

face of the sentencing judgment. Consequently, Jones's claim should have been addressed on direct appeal and the post-conviction court properly denied his motion to correct sentence. See Robinson, 804 N.E.2d at 587; Collins v. State, 817 N.E.2d 230, 232 (Ind. 2004) (holding that defendant may not raise a freestanding claim of error in a petition for post-conviction relief where the claim was known, available, and not raised on direct appeal).

The judgment of the post-conviction court is affirmed.

VAIDIK, J., and CRONE, J., concur.